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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

AT PORTLAND

WILLAMETTE VIEW, INC., an Oregon  
nonprofit corporation,

Plaintiff,

v.

WILLAMETTE VIEW FOUNDATION, an  
Oregon nonprofit corporation d/b/a The  
Residents Foundation–Willamette View,

Defendant.

Case No. 3:16-cv-00778

**COMPLAINT**

**False Designation of Origin (15  
U.S.C. §1125(a)) and Common Law  
Trademark Infringement and Unfair  
Competition**

**By Willamette View, Inc.**

**DEMAND FOR JURY TRIAL**

Plaintiff, Willamette View, Inc., by and through its undersigned counsel, makes the following allegations for its Complaint against Defendant, Willamette View Foundation, which does business under the assumed business name The Residents Foundation–Willamette View. These allegations are made upon knowledge with respect to Willamette View and its own acts, and upon information and belief as to all other matters.

## **PARTIES**

1. Willamette View, Inc. (at times referred to as “Willamette View”) is an Oregon nonprofit corporation licensed as a continuing care retirement community with its principal place of business in Portland, Oregon. Willamette View is a 60-year-old charitable non-profit and was originally named Willamette View Manor, Inc.

2. Willamette View Foundation, doing business as The Residents Foundation–Willamette View (at times referred to as “The Residents Foundation–Willamette View”), is an Oregon nonprofit corporation with its principal place of business in Portland, Oregon. The Residents Foundation–Willamette View provides financial management and fiduciary services, including acting as trustee or with power of attorney, financial education, and financial assistance to residents of Willamette View’s senior-living residences, but is not affiliated with Plaintiff. Willamette View Foundation was originally named Willamette View Manor Foundation.

## **JURISDICTION AND VENUE**

3. This is an action for false designation of origin arising under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, as well as trademark infringement and unfair competition under Oregon common law. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 (federal question), 1338(b) (related claims of unfair competition), and 1367 (supplemental jurisdiction), and 15 U.S.C. § 1121 (Lanham Act actions).

4. This Court has personal jurisdiction over The Residents Foundation because its principal place of business is in Portland, Oregon, and its state of incorporation is Oregon.

5. Venue is proper in this district under 28 U.S.C. § 1391.

## **WILLAMETTE VIEW’S RIGHTS IN ITS WILLAMETTE VIEW TRADE NAME AND TRADEMARK**

6. Willamette View was the first continuing care retirement community in the Portland metropolitan area. Founded in 1955, Willamette View has provided a community environment for people who want to live healthy, engaged lives throughout their retirement

years. Willamette View is a resident-governed community with access to top-notch health care and support services. At present, Willamette View houses approximately 465 residents in its residences. As an integral part of its charitable mission, Willamette View solicits and accepts donations of funds that it uses to provide assistance to Willamette View residents who live beyond their financial resources.

7. Willamette View has used WILLAMETTE VIEW as its trade name and trademark since at least as early as January 1955, nearly 60 years ago, originally as “Willamette View Manor,” and then later as Willamette View. As a result, the trade name and trademark WILLAMETTE VIEW is well known to businesses, foundations, donors and consumers in the Pacific Northwest, particularly within the Portland Tri-County area and Clark County, Washington. Willamette View’s residents, their families, potential residents, and the public have come to rely upon and look for the WILLAMETTE VIEW trademark to identify services originating from Willamette View. As a consequence, the WILLAMETTE VIEW trade name and trademark have come to symbolize valuable goodwill and reputation of Willamette View.

8. Willamette View, Inc. is the owner of the WILLAMETTE VIEW trade name and trademark. There is no federal or state registration for the WILLAMETTE VIEW trademark.

#### **INFRINGEMENT ACTIVITIES OF THE RESIDENTS FOUNDATION–WILLAMETTE VIEW AND CONSEQUENT HARM TO WILLAMETTE VIEW AND THE PUBLIC**

9. Willamette View Foundation was organized by Plaintiff on November 3, 1967. Willamette View Foundation’s Articles of Incorporation limit the nonprofit’s operations to exclusively charitable purposes. In the first two decades of its existence, Willamette View Foundation maintained close ties to Willamette View and there was overlap among members of the respective boards of Willamette View and Willamette View Foundation.

10. Since its inception in 1967, Willamette View Foundation has provided financial assistance to residents of Willamette View who have depleted their assets. About 30 years ago, in 1986, the boards of Willamette View and Willamette View Foundation separated completely.

Currently, none of the directors of The Residents Foundation–Willamette View has any connection with the management of Willamette View and six of the nine directors of The Residents Foundation–Willamette View are not residents of Willamette View.

11. Shortly after the boards separated in 1986, Willamette View Foundation amended its Articles to allow it to provide trustee and fiduciary services to Willamette View residents in addition to financial assistance. On information and belief, Willamette View Foundation now regularly acts as a fiduciary for Willamette View residents and provides investment management, bookkeeping and other financial services to them.

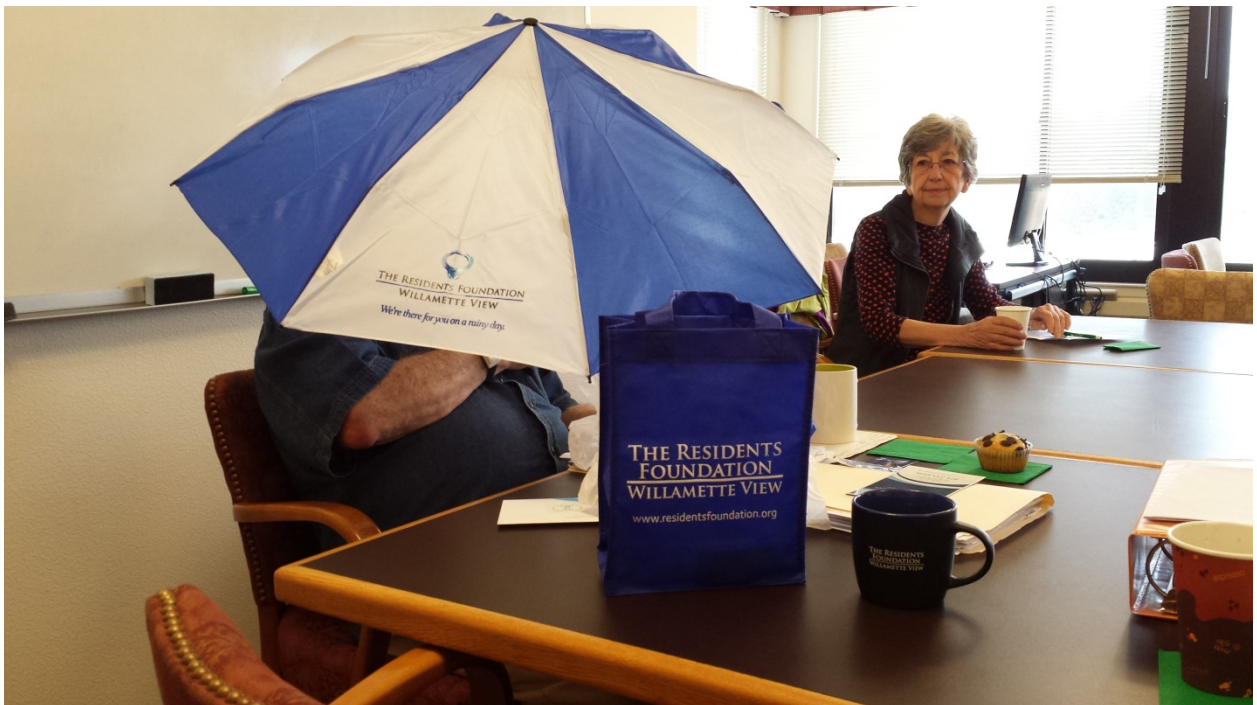
12. From its founding in 1967 through January 2016, Willamette View Foundation used its corporate name, Willamette View Foundation, as the trade name with which it held itself out to and conducted business with the public. In February 2016, it abandoned the Willamette View Foundation trade name and began using a new trade name, The Residents Foundation–Willamette View, and started operating a website using that name at [www.residentsfoundation.org](http://www.residentsfoundation.org).

13. Willamette View supports The Residents Foundation’s mission of providing financial assistance to needy residents at Willamette View, but not at the expense of creating confusion with the WILLAMETTE VIEW trademark and trade name.

14. Both Willamette View and The Residents Foundation–Willamette View solicit donations for, and provide, financial assistance to needy residents of Willamette View under their respective trademarks and trade names. Willamette View solicits donations to its Benevolent Fund for Resident Assistance, which “provides financial security to individual residents if they live beyond their financial resources.” *See* <http://www.willametteview.org/about-us/charitablegiving/willamette-view-community-funds/#Benevolent>. Similarly, The Residents Foundation–Willamette View solicits donations to its Resident Assistance Program, which “will pay part or all of the costs of residency at

Willamette View for eligible residents whose assets have been completely depleted.” See <http://www.residentsfoundation.org/our-services/>.

15. The Residents Foundation–Willamette View also produces marketing materials in which the phrase “Willamette View” appears underneath the phrase “The Residents Foundation,” as shown in this photograph:



16. The confusing similarity between the trademarks and trade names WILLAMETTE VIEW and THE RESIDENTS FOUNDATION–WILLAMETTE VIEW is likely to cause potential donors to believe that the residence assistance provided by Willamette View and the residence assistance provided by The Residents Foundation–Willamette View comes from the same organization. Individuals who wish to donate money to assist needy residents at Willamette View therefore are likely to mistakenly donate money to The Residents Foundation–Willamette View while intending to contribute to Willamette View.

17. Moreover, The Residents Foundation–Willamette View actively encourages potential donors wishing to donate funds for financial assistance of residents at Willamette View

to make those donations to it rather than to Willamette View. In a blog post on its website, The Residents Foundation–Willamette View tells prospective donors they should donate to Willamette View if they want to help capital campaigns to maintain Willamette View’s infrastructure or expand its capacity, but that “[d]onations intended for needy residents should go to The Residents Foundation | Willamette View.” This blog post incorrectly implies that Willamette View neither solicits funds for nor provides financial assistance to its residents and encourages potential donors to bypass donating to Willamette View and to give to The Residents Foundation–Willamette View instead.

18. Willamette View and The Residents Foundation–Willamette View have different eligibility standards for determining whether a resident of Willamette View qualifies for financial assistance. The eligibility standards of The Residents Foundation–Willamette View are stricter than those of Willamette View, placing tight limits on recreational spending, charitable contributions, and gifts to friends and family by residents who wish to receive, or are receiving, aid. The Residents Foundation–Willamette View threatens to deny assistance to residents of Willamette View who live, in the estimation of The Residents Foundation–Willamette View, “extravagantly,” by taking “expensive vacations,” or choosing to have “costly apartment upgrades.” The Residents Foundation–Willamette View may rescind assistance if it decides that a resident has spent too much on private health care assistance, and may insist that a resident move to a lower cost apartment at Willamette View, on pain of losing their financial assistance.

19. The availability of a resident assistance program can be a significant factor when prospective residents’ choose a senior living facility, since a resident assistance program provides reassurance that residents will be able to stay in their home if they should outlive their resources. The confusing similarity between the trademarks and trade names WILLAMETTE VIEW and THE RESIDENTS FOUNDATION–WILLAMETTE VIEW is likely to cause prospective residents of Willamette View to believe mistakenly that the eligibility standards of



The Residents Foundation–Willamette View are those of Willamette View, and that mistaken belief may cause prospective residents to decide not to take up residence at Willamette View.

20. The Residents Foundation–Willamette View also offers services that, on information and belief, it is not authorized to provide. The Residents Foundation–Willamette View offers fiduciary and trust services to Willamette View residents without a certificate of authority from the Oregon Department of Consumer and Business Services. It tells residents at Willamette View that they can “enjoy peace of mind” by having it act as successor trustee and fiduciary upon death, “paying final bills, settling estates, and distributing assets to heirs.” On information and belief, however, The Residents Foundation–Willamette View does not possess the proper certificate of authority to offer some or all of these services. Doing so may violate Oregon’s Banking Act, ORS Chapter 709. The confusing similarity between the trademarks and trade names WILLAMETTE VIEW and THE RESIDENTS FOUNDATION–WILLAMETTE VIEW is likely to cause prospective donors to believe mistakenly that Willamette View is engaging in these unauthorized services and to withhold donations as a result.

21. Provision of trust and financial management services by The Residents Foundation–Willamette View raises serious questions regarding conflicts of interest. The Residents Foundation–Willamette View, as stated in its own marketing materials, acts as trustee, acts as agent under a power of attorney or personal representative, arranges management of investment assets, provides referrals and coordinates services with other professionals, reconciles bank and investment account statements, pays bills, settles estates and distributes assets at death for Willamette View residents. The Residents Foundation–Willamette View creates at least a perception of a conflict of interest by soliciting donations from assets it also seeks to manage and control. The confusing similarity between the trademarks and trade names WILLAMETTE VIEW and THE RESIDENTS FOUNDATION–WILLAMETTE VIEW is likely to cause prospective donors to believe mistakenly that Willamette View is engaging in activities that create a conflict of interest between it and its residents, and to withhold donations as a result.

22. The Residents Foundation–Willamette View solicits donations and offers its resident assistance, investment management, bookkeeping and fiduciary services in commerce that may lawfully be regulated by Congress.

23. Infringement by The Residents Foundation–Willamette View of the WILLAMETTE VIEW trademark and trade name has caused irreparable harm to Willamette View’s reputation and goodwill. Willamette View will continue to suffer irreparable injury to its reputation and goodwill unless The Residents Foundation–Willamette View is enjoined from continuing to engage in its infringing conduct, and that injury cannot be adequately compensated monetarily. As long as The Residents Foundation is allowed to continue the acts complained of, Willamette View’s reputation will continue to be damaged.

24. Upon learning of the infringing activity of The Residents Foundation–Willamette View, Willamette View took immediate steps to notify The Residents Foundation–Willamette View of the infringing activity and to demand that it cease. The Residents Foundation–Willamette View refused to cooperate with Willamette View’s requests, and continues to solicit donations and offer services under its confusingly-similar THE RESIDENTS FOUNDATION–WILLAMETTE VIEW trademark and trade name.

### **FIRST CLAIM FOR RELIEF**

#### **(False Designation of Origin – Lanham Act – 15 U.S.C. § 1125(a))**

25. Willamette View realleges all preceding allegations of this Complaint as if stated herein.

26. The conduct of The Residents Foundation–Willamette View described above is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of The Residents Foundation–Willamette View with Willamette View or as to the origin, sponsorship, or approval of the services or commercial activities of The Residents Foundation–Willamette View by Willamette View, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).



27. The conduct of The Residents Foundation–Willamette View has been willful and intentional, making this an exceptional case pursuant to 15 U.S.C. § 1117.

## **SECOND CLAIM FOR RELIEF**

### **(Common Law Trademark Infringement and Unfair Competition)**

28. Willamette View realleges all preceding allegations of this Complaint as if stated herein.

29. The conduct of The Residents Foundation–Willamette View described herein constitutes common law trademark infringement and unfair competition in violation of the common law of the State of Oregon and of the other states of the United States.

## **PRAYER**

WHEREFORE, Plaintiff Willamette View prays for relief against Defendant The Residents Foundation–Willamette View as follows:

1. Entry of preliminary and permanent injunctions enjoining The Residents Foundation–Willamette View and its servants, agents, employees, successors and assigns, and all persons acting in concert with them, from using in any manner the WILLAMETTE VIEW trademark or trade name or any other trademark or trade name confusingly similar to the WILLAMETTE VIEW trademark.

2. Ordering The Residents Foundation–Willamette View to deliver up to Willamette View for destruction all goods, signs, advertisements, literature, business forms, cards, labels, packages, wrappers, pamphlets, brochures, receptacles, and any other written or printed material in their possession or under their control which contain or encompass the WILLAMETTE VIEW trade name or trademark, any colorable imitations thereof, or any marks or trade dress confusingly similar to the WILLAMETTE VIEW trademark; or which contain any false or misleading representation of fact;

3. Ordering The Residents Foundation–Willamette View to file with this Court and serve on Willamette View's counsel within thirty (30) days after the Court's issuance of

judgment, a report setting forth in detail the manner and form in which The Residents Foundation–Willamette View has complied with Paragraphs 1 through 3 of Willamette View’s Prayer for Relief;

4. Awarding compensatory damages sustained by Willamette View and profits generated by The Residents Foundation–Willamette View as a result of the acts complained of herein pursuant to federal and state law, to be trebled in accordance with 15 U.S.C. § 1117;

5. Awarding Willamette View its attorneys’ fees pursuant to 15 U.S.C. § 1117, and other applicable federal and state laws;

6. Awarding Willamette View interest, costs, and such other relief as the Court may deem just and equitable.

#### **JURY DEMAND**

Willamette View hereby demands a trial by a jury of all issues so triable.

DATED this 4<sup>th</sup> day of May, 2016.

#### **DAVIS WRIGHT TREMAINE LLP**

By /s/Stuart R. Dunwoody

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